

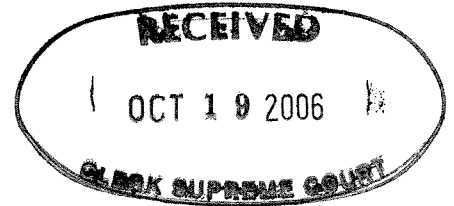
STATE OF MICHIGAN  
IN THE SUPREME COURT

IN RE REQUEST FOR ADVISORY OPINION  
REGARDING CONSTITUTIONALITY  
OF 2005 PA 71.

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Supreme Court No. 130589

SUPPLEMENTAL AUTHORITY



Earlier this year, a panel of the United States Court of Appeals for the Sixth Circuit decided the case of *Stewart v Blackwell*, 444 F3d 843 (CA 6, 2006). There, the plaintiff voters argued among other things that the use of unreliable voting equipment in some counties but not others infringed upon their right to vote and violated the Equal Protection Clause of the Fourteenth Amendment. The Sixth Circuit discussed extensively the appropriate standard of review to apply in that case and determined that it must apply strict scrutiny to the challenged voting practice, rejecting the relevance of *Burdick v Takushi*, 504 US 428; 112 S Ct 2059; 119 L Ed 2d 245 (1992), and characterizing that case as applicable only to ballot access cases or cases not involving an infringement of the right to vote itself. 444 F3d at 862. Both of the Attorney General's principal briefs in this case cited and presented argument on the *Burdick* and *Stewart* cases, as have a number of the amicus briefs filed in this case.

The majority of the panel ruled in favor of the plaintiffs on their equal protection claim. The dissenting judge disagreed with the majority's views that strict scrutiny applied and would have followed *Burdick* to conclude that the voting technologies used did not constitute a severe restriction on the right to vote or violate the Equal Protection Clause. 444 F3d at 886. The defendant election officials filed a motion for rehearing en banc. On July 21, 2006, the Sixth

Circuit granted the motion for rehearing en banc, which has the effect of vacating the prior opinion and judgment of the panel. (See July 21, 2006, Order, attached). See 6 Cir R 35(a). Accordingly, the Court's prior opinion in *Stewart v Blackwell* no longer has any precedential value or effect.

Respectfully submitted,

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Date: October 18, 2006.

# FIELD

## JUL 21 2006

EFFIE STEWART, ET AL.,

Plaintiffs-Appellants,

**V.**

J. KENNETH BLACKWELL,

Defendant-Appellee.

ORDER

Leonard Green  
Leonard Green, Clerk